IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1213 of 2001 and C.A.No. 1215 of 2001

Nandhu @ Nandhakumar .. Appellant in
C.A.1213 of 2001

1. Ravi @ Steel Ravi
2. Saravanan
3. Venkatesh @ Roja Venkatesh .. Appellants in
C.A.1215 of 2001
-Vs-

State: rep. by
The Inspector of Police
Erode South Police Station
Erode
Crime No.400 of 2000 .. Respondent in both
appeals

These criminal appeals are preferred under Sec.374(2) of The Code of Criminal Procedure against the judgment dated 10.12.2001 made in S. C.No.32 of 2001 on the file of the Additional Sessions Judge (Fast Track Court No.I), Erode.

!For Appellant in C.A.1213/01 : Mr.V.K.Muthusamy, SC
for Mr.N.Manoharan

For Appellants in C.A.1215/01 : Mr.M.S.Velusamy
Amicus Curiae

^For Respondent in both appeals : Mr.O.Srinath
Govt. Advocate(Crl. Side)

:COMMON JUDGMENT

This judgment shall govern these two appeals namely C.A.Nos.1213 and 1215 of 2001.
2. The appellants herein, who were ranked as A-1 to A-4, stood charged, tried and found guilty under Ss 427 and 364 of IPC, while A-1 under Sec.307 IPC and A-2 to A-4 under Ss 307 read with 34 and 324 of IPC, and A-1 to A-4 were sentenced to undergo 2 years R.I. under Sec.427 of IPC and to undergo 10 years R.I. and to pay a fine of Rs.2,500 /-, in default to undergo

6 months R.I. under Sec.364 of IPC, while A-1 was sentenced to undergo 10 years R.I. and to pay a fine of Rs.2,5 00/- in default to undergo 6 months R.I. under Sec.307 of IPC, A-2 to A-4 to undergo 10 years R.I. and to pay a fine of Rs.2,500/-, in default to undergo 6 months R.I. under Sec.307 read with 34 of IPC and A-2 to A-4 to undergo 3 years R.I. under Sec.324 of IPC. Aggrieved A-1 to A-4 have brought forth these appeals.

3. The short facts necessary for the disposal of these two appeals can be stated as follows:

(a) P.W.1 Parthiban is an associate of one Tyre Raja and Amukkan @ Viji. All the three were accused in a crime pending investigation on the file of the Erode Town Police Station. The father of Tyre Raja was murdered by Saravanan and Venkatesh A-2 and A-3 respectively. On 16.4.2000 at about 8.30 P.M., at Sabari Bakery, Naddar Medu, Erode, while P.W.1 the complainant was taking tea in the stall of P.W.4 Thiagarajan, A-1 to A-4 came there in two motorcycles. On seeing P.W.1, all the accused caused damage to Pepsi bottles available in the shop. Thereafter, at knife point they took P.W.1 in their motorbike to Manickampalayam Housing Unit. While P.W.1 was taken in the motorbike of A-1, the other three went in the other motorbike. On the terrace of the Classic Furniture Shop, the accused persons attacked P.W.1 with knife and threatened him to disclose the whereabouts of Tyre Raja and Viji. P.W.1 was not aware of the whereabouts. When the same was informed, the accused persons got angry, assaulted P.W.1 indiscriminately with wooden log and caused injuries on his head. P.W.1 became unconscious and fell down. He sustained fracture in his left leg. Again A-1 to A-4 caused injuries to P.W.1 on the various parts of his body. P.W.2 Prakash @ Kesavan and P.W.3 Suresh Kumar witnessed the entire occurrence. P.W.1 escaped from the accused. He hide himself in the nearby lane. From there, he took an auto rickshaw and came to his house and informed the fact to his mother P.W.6 Manimegalai. Apprehending danger at the hands of the accused, he did not go for treatment immediately. Next day morning at about 10.15 A.M., P.W.1 was taken to C.K. Hospital, Erode by his mother for treatment. P.W.5 Sathiamurthy is the owner of a petty shop at Bharathi Bhavan.

(b) P.W.10 Durai, Head Constable attached to Erode South Police Station, received intimation from the C.K. Hospital on 17.4.2000 at about 11.45. He proceeded to the said hospital at 12.00 hours and obtained a statement from P.W.1. On the strength of the said statement marked as Ex.P1, P.W.10 registered a case in Crime No.400 of 2000 under Ss 363, 326, 427 and 506(ii) of I.P.C. Ex.P14 printed F.I.R. was sent to the concerned Judicial Magistrate's Court. He forwarded the report to the Investigating Officer and to the concerned Court. P.W.11 Subramaniam, Inspector of Police, Karungalpalayam Police Station obtained permission, took the custody of A-1, A-3 and Irandayiram @ Chinnappan who were in custody in connection with another case in Crime No.330 of 2000 and obtained statements from them on 7.9.2000. A-1 gave a confessional statement stating that he along with A-2 and A-3 on 16 .4.2000 came to the place of occurrence with Yamaha and Suzuki Motor Cycle and committed the offence. The vehicles were seized from the house of Irandayiram @ Chinnappan, and they were produced before the Judicial Magistrate No.I under Form 95.

(c) P.W.8 Dr.Sachidanandham examined P.W.1 on 17.4.2000 at about 10.45 A.M. to whom P.W.1 informed that he was assaulted by known persons on 16.4.2000 at 9.00 P.M. P.W.8 found the following injuries.

1) Swelling and deformity of left wrist.
2) lacerated injury over lower lip 2 cm x 1 cm.
3) Multiple abrasion below front chest 1 cm x 2 cm, 2 cm x 5 cm, 1 cm x 1 cm, 5 cm x 2 cm.
4) Abrasion over left arm anterior 5 cm x 3 cm.
The Doctor has given the opinion that the injury No.1 was grievous in nature, while the other injuries were simple and has issued Ex.P7 wound certificate. The hospital intimation and the case sheet are marked as Exs.P8 and P9 respectively. (d) P.W.12 Pandian, Inspector of Police, Erode South Police Station who took up the investigation on 17 .4.2000 at 2.00 P.M., came to the site of occurrence, made an inspection, prepared Ex.P2 observation mahazar and Ex.P15 rough sketch and seized M.O.4 under Ex.P3 mahazar, which was attested by P.W.7 Sudhakar and one Santhoskumar. The Investigating Officer proceeded to the C.K.Hospital, seized M.O.1 shirt produced by P.W.1 under Ex.P4 mahazar. He proceeded to Manickampalayam Housing Unit, made an inspection of the site of occurrence and prepared Ex.P5 observation mahazar and Ex.P16 rough sketch. Again he recovered M.O.2 (series) 4 knives under Ex.P7 mahazar. All of them were attested by P.W.12 and one Santhoskumar. P.W.12 obtained statements from the witnesses. On 18.4.2000 P.W.1 was examined by P.W.12, and he altered the case to one under Sec.307 of I.P.C. The altered report under Ex.P17 was sent to the concerned Court. On 30.6.2000 P.W.12 under Ex.P10 made a request to the Court to send the material objects for chemical analysis. P.W.9 Thirumurthy, Head Clerk, attached to the Court of Judicial Magistrate No. III, Erode has deposed that the material objects as per the requisition were sent to the Forensic Laboratory, Madras and the Chemical Analyst's report was received under Ex.P12, and the Serologist's report under Ex.P13. P.W.12 Inspector of Police examined P.W.8 Doctor, and on completion of the investigation, he laid a charge sheet against the accused on 4.9.2000 before the Judicial Magistrate No.III, Erode.
4. In order to prove the charges levelled against the appellant/A-1 to A-4, the prosecution examined 12 witnesses and marked 18 exhibits and 4 material objects. On completion of the evidence by the prosecution, the accused were questioned under Sec.313 of The Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. No defence witness was examined, and no exhibit was marked. On consideration of the rival submissions made and the scrutiny of the materials available, the trial Court found the appellants/accused guilty of the said offences and sentenced them to undergo the imprisonment as stated supra. Aggrieved accused 1 to 4 have brought forth these appeals.
5. Arguing for the appellant/A-4 in C.A.1213 of 2001, the learned Senior Counsel Mr.V.K.Muthusamy made the following submissions for the consideration of the Court:
The trial Court without any iota of evidence has found appellant/A-4 guilty under the different provisions of the Penal Code. The occurrence, according to the prosecution, has taken place at 8.45 P.M. on 1 6.4.2000. But, according to P.W.1 he was admitted in C.K.Hospital only by 10.30 A.M. next day morning namely 17.4.2000, and the Doctor has examined him by 10.45 A.M., and the case came to be registered only by 12'O Clock. This would be clearly indicative of the fact that Ex.P1 complaint was given, and the case was registered only after nearly about 14.00 or 15.00 hours. This would go to

show that all the embellishments would have been made in the prosecution case. The prosecution relied on the evidence of P.W.1, the injured and P.Ws.2 to 5. P.Ws.4 and 5 have turned hostile. A perusal of the evidence of P.Ws.2 and 3 would indicate that they have neither identified nor pointed out A-4 either at the place of the tea st all or at the place where P.W.1 was alleged to have been assaulted by the accused. So far as A-4 was concerned, the trial Court has mainly relied on the evidence of P.W.1, which was thoroughly uncorroborated. Even assuming that the evidence of P.W.1 is believed by the Court, no ingredients of either Sec.307 IPC or Sec.364 would be attracted. It is pertinent to note that the Doctor who gave treatment to P.W.1 has stated that there was only one injury found on the wrist of P.W.1 as grievous and all other injuries were simple. A reading of the evidence of the Doctor along with the wound certificate would clearly indicate that there was nothing to endanger the life of P.W.1, and in the absence of the same, no ingredients of Sec.307 of IPC would be attracted. It is pertinent to note that there is no iota of evidence to indicate that it was A-4 who accompanied A-1 to a-3 and took away P.W.1 from the tea stall to Manickampalayam Housing Unit. Even assuming that the prosecution case as spoken to by P.W.1 is true, either Sec.323 of IPC or 324 of IPC would be attracted and not Sec.364 or 307 of IPC. In view of all the above, the appellant/A-4 is entitled for an acquittal in the hands of this Court.

6. Arguing for the appellants/A1 to A3 in C.A.1215 of 2001, the learned Amicus Curiae counsel made the following submissions for the consideration of the Court:

The occurrence has taken place on 16.4.2000 at about 8.30 p.m., but the complaint was lodged only on 17.4.2000 with a delay of 14 hours and the F.I.R. has also reached the Court only on 18.4.2000, and thus there was a delay in lodging a complaint and also F.I.R reaching the court. The evidence of P.W.1 was not corroborated by any evidence. The evidence of the Doctor, who was examined as P.W.8, has not supported the ocular evidence, namely, the evidence of Pws.1 to 3. According to the prosecution, P.W.1 was admitted by one Saraswathi in C.K. Hospital, Erode, but she was not examined. In his evidence, P.W.8 Doctor has admitted that he did not know as to who has admitted PW1 in the hospital. Hence, his evidence cannot be taken into account. The material objects were recovered from the place of occurrence, but they were not recovered pursuant to the confessional statement given by the accused. No material was available to show as to how the accused was arrested and in order to prove the same, nothing has been brought forth by the prosecution.

7. Added further the learned counsel that sufficient suggestions have been put to P.W.11 that what was placed before before the court was not original information, but original information was suppressed and what was produced before the Court was subsequently brought forth in order to sue the convenience of the prosecution case, since the accused have got number of cases, the police force has foisted a false case against the accused and hence the judgment of the lower court has got to be set aside.

8. Strongly opposing all the contentions put forth by the appellants' side, the learned Government Advocate (Criminal Side) would submit that the prosecution has examined PWs.1 to 5, but Pws.4 and 5 have turned hostile; that it is true that PWs.1 to 3 have categorically narrated the whole occurrence that P.W.1 has been taken from the tea shop and therefrom, he was taken to a

hill area, and thus, Section 364 IPC has been proved. Apart from that, at that time, the accused attempted to murder him, which was clearly described by P.W.1 and subsequently corroborated by the medical evidence. There is no question of delay either in lodging a complaint or the F.I.R. reaching the Court, since P.W.1, who was injured, has explained that due to fear he did not come out from his house and on the next day, he went to hospital with his mother. On intimation, P.W.10 Head Constable came to the hospital and obtained statement from P.w.1; that P.W.10 registered a case under Section 506(2) and printed F.I.R. was prepared. Since it was not a express F.I.R., the same was not sent immediately. Under the stated circumstances, no question of delay would arise. It is also pertinent to point out that one Saraswathy, the Medical Superintendent, has first admitted P.W.1 in the hospital and has sent intimation. A case sheet has also been produced before the Court. P.W.8 Doctor has issued Ex.P.7 Wound Certificate and the injuries have been narrated in the same. Hence, no comments should be made against the medical evidence, which was in full corroboration of the ocular evidence. Under the stated circumstances, the lower court was perfectly correct in recording the conviction against the accused and the ingredients under Sections 364 and 307 I.P.C. are attracted.

9. This Court paid its full attention on the rival submissions made and had a close scrutiny of the materials available.

10. The gist of the prosecution case as seen above was that on 16.4 .2000 at about 8.30 pm at Sabari Bakery, Naddar Medu, while the complainant P.W.1 was taking tea, all the appellants came there in two motor cycle and on seeing P.W.1, accused Nos.1 to 4 caused damage to soda bottles available in the shop of P.W.4 and thereafter at knife point they took P.W.1 in the motor bike, which was driven by A1, to Manickampalayam Housing Unit. The entire occurrence was witnessed by P. Ws.2 to 5. After he was taken to Manickampalayam Housing Unit, on the terrace of Classic Furniture Shop, the accused persons caused injuries to P.W.1 with knife and criminally intimidated him to disclose the whereabouts of Tyre Raja and Viji. When P.W.1 came out with an answer that he did not know about the same, all the accused assaulted him with wooden log and caused injures on his head and his left hand. Again A1 to A4 caused injuries on different parts of his body. Then, the fled away from the scene of occurrence. On a careful scrutiny of the available evidence, this Court is able to see that the prosecution has placed necessary evidence proving both parts of the occurrence by satisfactory and acceptable evidence. Insofar the damage caused to the soda bottles available in the shop of P.W.4 is concerned, it was not only spoken by the owner of the shop, namely, P.W.4, but also by the injured P.W.1 and the eyewitnesses, namel y, P.Ws.2,3 and 5, and hence, there is nothing to suspect about that part of the occurrence. The lower court was perfectly correct in convicting the accused under Section 427 IPC.

11. P.W.1 was taken away from that place to Manickampalayam Housing Unit by the accused. This fact has been spoken to by P.W.1 and his evidence is fully corroborated by P.Ws.2 and 3. It is true that P.Ws.4 and 5 have turned hostile, but it has in no way affected the case of the prosecution. P.W.1 has given a graphic narration of the entire occurrence. It is true that P.Ws.2 and 3 have spoken only about A1 to A3 and both have came out with an answer that they did not have any idea about A4. It is also true that they were not treated as hostile. The earliest document that came into existence

was Ex.P.1 complaint and in the complaint all the four names of the accused have been clearly stated by P.W.1. P.W.1 was not only an eyewitness, but also an injured. There is no circumstance brought forth to reject or suspect the testimony of P.W.1, and hence, no doubt could be cast in respect of the occurrence that it was only A1 to A4, who attacked him at the place of occurrence on the terrace of Classic Furniture Shop. The comment made by the appellants' side that the medical evidence has not corroborated the ocular evidence has got to be rejected. On the next day morning at about 10.30 a.m., P.W.1 was taken to C.K. Hospital, Erode, where he was given treatment. This fact cannot be disputed in view of the examination of P.W.8 Doctor. Apart from that wound certificate has been issued in that regard. The prosecution has also placed case sheet before the Court. The trial court had an occasion to have a perusal of all the documents. What are all the injuries narrated therein by way of medical evidence has fully corroborated the evidence of P.W.1. Hence, the Court is of the view that the medical evidence has corroborated the ocular evidence.

12. Another contention raised by the appellants' side that there was a delay in lodging a complaint and F.I.R. reaching the Court. This has got to be discountenanced for the reason that P.W.1 has well explained that he was attacked on 16.4.2000, but due to fear he did not come out of his house and he went to hospital only on the next day. The court is of the view that P.W.1 was taken away by the accused and he was kept under threat, and hence, due to fear, he did not come out from his house and on the next day, he went to the hospital. On intimation from the hospital, P.W.10 proceeded to the hospital, recorded statement from P.W.1 and on the strength of the same, a case was registered. It is true that F.I.R has reached the Court only on 18.4.2000 . The explanation put forth by the prosecution was that originally a case was registered under Section 506(2), and there was no express F.I.R. Hence, the police did not send the same immediately. This court is unable to notice any delay and if any delay has occurred, that has been taken by way of ordinary course of events, and hence, not much weight could be attached to the delay so caused. Under the stated circumstances, the prosecution has proved that the accused 1 to 4 have damaged the soda battles belonged to P.W.4, and thus, punishment under Section 427 IPC has been proved. The accused have taken P.W.1 from that place to Manickampalayam Housing Unit under threat. But, this Court is unable to notice that there is any case under Section 364 IPC, since there is nothing to show that P.W.1 was taken away by the accused with an intention to cause murder or may be so disposed of as to be put in danger of being murdered. Hence, ingredients under Section 364 IPC is neither attracted nor made out. But, the Court is able to see that the act of the accused would would fall under Section 367 IPC, because, the accused had taken the accused under threat and the accused was subjected to grievous hurt. Under the stated circumstances, they are liable to be punished under Section 367 IPC instead of Section 364 IPC.

13. The Court is of the view that the terms of punishment of five years R.I. along with a fine of Rs.500/-, in default to undergo one month RI would be sufficient, which would meet the ends of justice. In the instant case, the prosecution has proved the case that all the four accused took P.W.1 from the tea shop of P.W.4 to Manickampalayam Housing Unit, and when he refused to reveal the whereabouts of Tyre Raja and Viji, they attacked P.W.1 with wooden log and caused injuries on him. The indiscriminate attack with

wooden logs would clearly indicate that the accused have acted with an intention to cause his death, but he escaped from their clutches. Hence, taking into consideration the facts and circumstances of the case, the ingredients under Section 307 of IPC would be attracted.

14. The Court is of the view that instead of 364 IPC, the accused 1 to 4 are convicted under Section 367 IPC and they are sentenced to undergo five years RI along with fine of Rs.500/-, in default to undergo one month RI and the conviction and sentence imposed to the accused 1 to 4 under Section 364 IPC are set aside. The sentence awarded by the trial court under Section 307 IPC in respect of A1 and sentence imposed in respect of A2 to A4 under Section 307 r/w 34 IPC along is reduced to seven years. In other respect, the judgment of the trial court is confirmed. With the above modificati on, these criminal appeals are dismissed. The Sessions Judge shall take steps to commit the accused No.4 to prison, if he is on bail, to undergo the remaining period of sentence.

15. The Legal Aid, Chennai is directed to pay necessary fee, as applicable, to the Amicus Curiae.

Index : Yes
Internet : Yes

vvk/nsv

To
1. The Judicial Magistrate, No.3, Erode
2. The Judicial Magistrate, No.3, Erode
through the Chief Judicial Magistrate, Erode
3. The Addl. Sessions Judge, Erode
4. The Superintendent, Central Prison, Trichy
5. The Superintendent, Central Prison, Coimbatore
6. The Public Prosecutor, High Court, Madras
7. The Dy. Inspector General of Police, Chennai-4
8. Mr.O.Srinath, Govt. Advocate(Criminal side)
High Court, Chennai
9. The Inspector of Police,Erode South Police Station,Erode
10.Mr.M.S.Velusamy, Amicus Curiae Advocate
No.91, Law Chambers, High Court, Madras
11.The Secretary, Legal Aid, Chennai

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